

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
On Its Own Motion

Amendment of 83 Ill. Adm. Code 451

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10-0108

ORDER

By the Commission:

The Illinois Commerce Commission ("Commission") has adopted 83 Ill. Adm. Code 451, "Certification of Alternative Retail Electric Suppliers" to regulate the entry of these alternative retail electric suppliers ("ARES") under Article XVI of the Public Utilities Act.

Effective August 10, 2009, P.A. 96-0159 added a requirement that the Commission make a finding for the procurement of renewable energy resources and sourcing electricity from clean coal facilities before granting an ARES Certificate. The Staff of the Commission's Financial Analysis Division and the Energy Division have drafted amendments to Part 451 to implement this requirement. In a Staff Report dated February 4, 2010, Staff supports the draft amendments by specifying the changes proposed to the rules and by providing a rationale for specific changes in the rules.

Staff proposes additional changes to improve the ARES certification and continuing compliance process. One of the proposed changes is to adjust the date to demonstrate continuing compliance with the ARES requirements from no later than January 31 to April 30 of each year. Staff claims that it is in the public interest to change the compliance deadline at the same time as implementing the new requirements. This will allow ARES to demonstrate that they met these requirements in their compliance filings due April 30. In addition, Staff proposes some changes to the financial qualifications to promote competition by reducing costs to ARES. As in the case of the adjustment of the compliance deadline, Staff claims that it is in the public interest to make the changes to the financial qualifications concurrent with the other changes, since it would be counterproductive to allow ARES to continue to receive new certificates using obsolete qualifications.

According to Staff, the proposed changes to the financial qualifications will remove unnecessary confusion for applicants or possible loopholes in the current requirements. Staff has crafted the proposed financial requirements to give ARES a choice of several options that gives participants the ability to choose a method that best fits the situation of a particular ARES. The ARES financial qualifications in Part 451 are fashioned in such a manner that any changes create a need for other changes, making

it imperative to keep all the options together as a package. It would be unnecessarily burdensome on ARES to change financial qualifications more than once during a compliance period. The Commission's adoption of all the changes to Part 451 (the new requirements, new compliance period, and amended financial qualifications) on an emergency basis, will enable an ARES to file one verified ARES application within one period containing all the necessary information. In addition, this will allow Staff to assess every company and allow ARES to meet these new requirements in an expeditious and fair manner for the upcoming compliance period, providing a smoother transition for both Staff and the ARES.

The Commission is satisfied that there is sufficient support in the Staff Report to warrant the initiation of a rulemaking proceeding, to support the adoption of the amendments on an emergency basis for a period not to exceed 150 days, and to submit the first notice of proposed rulemaking to the Secretary of State.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has subject-matter jurisdiction;
- (2) use of emergency rulemaking is necessary to effectuate amendments to the Public Utilities Act contained in P.A. 96-0159;
- (3) the amendments to 83 Ill. Adm. Code 451, attached as the Appendix to this Order, should be adopted on an emergency basis pursuant to Section 5-45 of the Illinois Administrative Procedure Act and the Notice of Emergency Amendments should be submitted to the Secretary of State pursuant to Section 5-45 of the Illinois Administrative Procedure Act;
- (4) the Notice of Proposed Amendments for 83 Ill. Adm. Code 451, as reflected in the Appendix to this Order, should be submitted to the Illinois Secretary of State pursuant to Section 5-40 of the Administrative Procedure Act;
- (5) this proceeding should be conducted as a rulemaking;
- (6) the Staff Report dated February 4, 2010 should be made a part of the record of this proceeding.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the amendments to 83 Ill. Adm. Code 451, as reflected in the Appendix to this Order, are adopted on an emergency basis pursuant to Section 5-45 of the Illinois Administrative Procedure Act, to be effective February 19, 2010, and that the Notice of Emergency Amendments be submitted to the Illinois Secretary of State.

IT IS FURTHER ORDERED that the Notice of Proposed Amendments be submitted to the Illinois Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act to initiate the first notice period for public comment.

IT IS FURTHER ORDERED that the Staff Report dated February 4, 2010 is made a part of the record of this proceeding.

IT IS FURTHER ORDERED that this proceeding is a rulemaking and shall be conducted as such and not as a contested case.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 10th day of February, 2010.

(SIGNED) MANUEL FLORES

Chairman